

APPEAL NO. 010735

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 13, 2001. With respect to the issues before him, the hearing officer determined that the appellant (claimant) did not sustain a compensable injury in the form of an occupational disease on _____; that she did not timely report her alleged injury; and that she did not have disability within the meaning of the 1989 Act because she did not sustain a compensable injury. In her appeal, the claimant essentially argues that those determinations are against the great weight of the evidence. In its response to the claimant's appeal, the respondent (carrier) urges affirmance.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury and that the claimant did not timely report her alleged injury. Those questions presented questions of fact for the hearing officer. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer resolves the conflicts and inconsistencies in the evidence, and determines what facts have been established from the evidence. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ); St. Paul Fire & Marine Ins. Co. v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). There was conflicting evidence presented on the issues of injury and timely reporting. The hearing officer was acting within his province as the fact finder in resolving those conflicts against the claimant and in determining that the claimant did not sustain her burden of proving that she sustained a compensable occupational disease injury or that she timely reported her alleged injury. Nothing in our review of the record demonstrates that the hearing officer's injury and notice determinations are so contrary to the great weight of the evidence as to compel their reversal on appeal.

Given our affirmance of the injury and notice determinations, we likewise affirm the determination that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

The hearing officer's decision and order are affirmed.

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge